

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellants:	Luis E. LUCIANI, JR. et al.	§	Confirmation No.:	9421
		§		
Serial No.:	10/728,465	§	Group Art Unit:	2451
		§		
Filed:	December 5, 2003	§	Examiner:	K. Q. Dinh
		§		
For:	Method and System For	§	Docket No.:	200314490-1
	Switching Between	§		
	Remote Console Sessions	§		

REPLY BRIEF

Mail Stop Appeal Brief – Patents

Date: October 22, 2009

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Examiner's Answer dated September 30, 2009, Appellants submit this Reply Brief.

I. RESPONSE TO ARGUMENTS OF THE EXAMINER'S ANSWER

**The Answer Fails to Address the Shortcoming
of the Upgrade Mode in Relation to the Claimed
Invention – There is No Console Session in the Upgrade Mode**

With respect to Simionescu's "normal mode" and "upgrade mode," the normal mode and upgrade mode refer only to the ability or inability, respectively, to update the primary memory 326 of the master 220 device. The only software executable by the processor 322 in the upgrade mode is the software held in the upgrade monitor memory 328, and that software only allows downloading of images and burning of images to the primary memory 326 of the master device 220.¹ It does not appear a console session is even possible between the

¹ Simionescu Paragraph [0038].

master device 220 and the host device 210, or any other device for that matter, in the upgrade mode.²

Thus, the Answer's reliance on the "upgrade mode" to be a console session, whether hardware, software, default or non-default, is clearly in error, and the Answer fails to address this shortcoming.

The Answer Mischaracterizes the Teaching of Simionescu

The Answer goes further to say, "Simionescu discloses switching between a default remote console session (normal mode) and a non-default remote console session (upgrade mode) and the logging into the remote computer initiates a console session being a default control sessions and then switching the consol [sic] session (remotely configuring of the host computer by way of the master device...)." ³ Appellants respectfully traverse. The primary memory 326, updated in the upgrade mode, resides within the master device 220, not the host 210.⁴ Thus, the host 210 is not upgraded in the in the upgrade mode. The only software executable by the processor 322 is the software held in the upgrade monitor memory 328, and that software only allows downloading of images and burning of images to the primary memory 326.⁵

Thus, contrary to the assertion of the Answer, the host 210 cannot be configured by the master device 220 in the upgrade mode. Moreover, and as discussed above, Appellants respectfully submit that the master device 220 in the upgrade mode cannot be fairly said to perform a console session as that term is used in Appellants' specification and understood by one having ordinary skill – in the upgrade mode all the master device 220 appears to be able to do is download images, which functionality is not a console session.

² Simionescu Paragraph [0038] – The unsophisticated and bug-free code appears to only download images from the host 210 to the primary memory 326 of the master device 220.

³ Answer of September 30, 2009, Page 8, paragraph spanning pages 8 and 9.

⁴ Simionescu Paragraph [0035].

⁵ Simionescu Paragraph [0038].

Because Simionescu fails to teach both a hardware-based remote console session, and a software-based remote console session, and because the Answer fails to overcome the shortcomings, Appellants respectfully request that the rejections be overturned and the claims set for issue.

II. CONCLUSION

It is believed that no extensions of time or fees are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), are hereby authorized to be charged to Hewlett-Packard Development Company's Deposit Account No. 08-2025.

Respectfully submitted,

/mes/

Mark E. Scott
PTO Reg. No. 43,100
CONLEY ROSE, P.C.
(512) 610-3410 (Phone)
(512) 610-3456 (Fax)
ATTORNEY FOR APPELLANTS

HEWLETT-PACKARD COMPANY
Intellectual Property Administration
Legal Dept., M/S 35
3404 E. Harmony Road
Fort Collins, CO 80528-9599